

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





75-1182

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA,

Appellee,

-against-

MONTY JOYNER,

Docket No. 75-1182

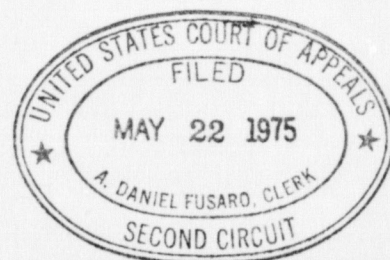
Defendant/ Appellant.

-----X

APPENDIX FOR APPELLANT

LAWRENCE STERN  
Attorney for Defendant/Appellant  
11 Monroe Place  
Brooklyn, N.Y. 11201  
(212) 875-4304

UNITED STATES ATTORNEY  
EASTERN DISTRICT OF N.Y.  
Attorney for Appellee  
225 Cadman Plaza East  
Brooklyn, N.Y. 11201



PAGINATION AS IN ORIGINAL COPY



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INFORMATION

A

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at 10:30 o'clock in the forenoon.

United States Attorney,  
Attorney for \_\_\_\_\_

Attorney for -----

PLEASE TAKE NOTICE that the within  
is a true copy of \_\_\_\_\_duly entered  
herein on the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, in the office of the Clerk of  
the U. S. District Court for the Eastern Dis-  
trict of New York,  
Dated: Brooklyn, New York,  
\_\_\_\_\_, 19\_\_\_\_

United States Attorney,  
Attorney for -----

Attorney for \_\_\_\_\_

UNITED STATES DISTRICT COURT  
Eastern District of New York

—Against—

Defendant.

## I N F O R M A T I O N

-----DAVID G. TRAGER-----  
United States Attorney,  
Attorney for -----U. S. A.-----  
Office and P. O. Address,  
U. S. Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Due service of a copy of the within -----  
----- is hereby admitted.

Dated: \_\_\_\_\_, 19\_\_

Attorney for -----

Myles C. Cunningham  
AUSA 596-4840



RJD:MCC:po  
F. 4743,295

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

MONTY JOYNER,

Defendant.

- - - - - X

THE UNITED STATES ATTORNEY CHARGES:

On or about the 12th day of August 1974, with-  
in the Eastern District of New York, the defendant MONTY  
JOYNER did unlawfully have in his possession a United States  
Treasurer's Check, bearing the number 29,006,561, payable  
to May Novelle in the amount of Two Hundred Eighty Four  
Dollars and Eighty Cents (\$284.80), which was the contents  
of a letter stolen from the United States Mail, the defend-  
ant knowing the same to have been stolen. (Title 18, United  
States Code, Section 1708).

\_\_\_\_\_  
DAVID G. TRACER  
United States Attorney

I N F O R M A T I O N

Cr. No. 75-125  
(T. 18, U.S.C. §1708)

DOCKET ENTRIES



BRANNWELL J.

CUNNINGHAM

875-4304

Notice of appeal (No fee)



## PROCEEDINGS

1/19/75	Information and Waiver of Indictment filed
1/19/75	Before BRAMWELL, J.- Case called- Deft and counsel Lawrence Stern present-
	Waiver of Indictment signed- Deft arraigned and having been advised
	of his rights by the court and on his own behalf enters plea of guilty
	as charged- Court finds that there is a factual basis for the plea- Bail
	conditions contd- sentence adjd without date
2-20-75	Letter apptg counsel filed (Max Schiffman) copy in file 74 M 1408 relates
2-21-75	Writ ret'd and filed - Executed.
2/24/75	Magistrate's file 74 M 1408 inserted into CR file.
4/4/75	Before BRAMWELL, J.- Case called- Adj'd to 4/7/75 at 10:00 A.M. for senten
4/7/75	Copy of petition for writ of habeas corpus ad prosequendum filed
4/7/75	By BRAMWELL, J.- Writ issued, ret. forthwith



10

A TRUE COPY  
ATTEST  
DATED 5/1 1971  
LEWIS ORREL  
BY Heath CLERK  
DEPUTY CLERK

SENTENCE LETTER



LAWRENCE STERN  
ATTORNEY AT LAW

11 MONROE PLACE  
BROOKLYN, N.Y. 11201  
(212) 875-4304

March , 1975

Hon. Henry Bramwell  
District Judge  
United States District Court  
for the Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, N.Y. 11201

Re: United States v. Monty Joyner  
Information No. 75 Cr. 125

Your Honor:

On February 19, 1975, Monty Joyner, defendant in the above entitled case, appeared before your Honor and waived his rights to indictment and trial by jury and pled guilty to a one count United States Attorney information charging the defendant's possession on August 12, 1974, of one stolen United States Treasurer's check in the amount of \$281.80 [18 U.S.C. §1703]. As counsel assigned by this Court to represent Mr. Joyner, I have come to understand him, the facts of his background, and the circumstances of this case, and I wish now to share these facts and understandings with the Court in aid of its ultimate imposition of sentence.

Mr. Joyner was arrested on September 28, 1974 by the New York City police as one of some 80 persons invited by two undercover city policemen to a sham party in a warehouse in Queens. Since this mass arrest was well-publicized at the time, your Honor may recall that the two policemen in Queens had been conducting a fencing operation out of an oil company storefront. They apparently used agents and informants on the street to solicit the purchase of stolen property of all kinds. In September, all those from whom they had made purchases of varying kinds and quantity were invited to the party and were there arrested. Mr. Joyner, as one of the approximately 80 people arrested, was accused on separate State and Federal charges of possession of stolen goods growing out of sales to the undercover New York City policemen. He was charged, individually, for substantive offenses only. The Federal complaint charged the offense to which he ultimately pleaded before Your Honor,

(continued)

Hon. Henry B. Swerdlow  
March , 1975  
Page 2

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On December 10, 1974, Mr. Joyner pleaded guilty in the Supreme Court of the State of New York, Queens County, to the state charges growing out of the sales to the undercover policemen, to a one count indictment charging him with criminal possession of stolen property in the second degree (an American Express Credit Card possessed on September 9, 1974), a Class E felony. On January 14, 1975, he was sentenced by the Honorable Thomas Agresta on this guilty plea to one year imprisonment. He is presently serving that sentence on Riker's Island; he has been in State custody on these charges since October 31, 1974. After arraignment on the federal charges on September 30, 1974, he was released on a \$5,000 magistrate's bond.

As the above procedural history of this case indicates, Mr. Joyner has readily admitted his guilt, waiving both indictment and trial in this federal case, and he seeks only to complete the process and penalty as quickly as possible so that he may return to the otherwise decent road he was attempting to follow in his life. Mr. Joyner had been an addict since 1959, from the age of 19. For the first time in his life, however, in the two years preceding his arrest on these charges, he had become heroin free and was doing very well in the Harlem Unit of the Methadone Maintenance Treatment Program at 103 East 125th Street, New York, New York 10035. (See attached letter from Mr. John Russell, Supervisor of that Program, addressed to the former Assistant U.S. Attorney who handled this case, Paul Lazarus). He had found employment and was working steadily at a part-time job as a messenger with the National Quotation Company, and as a full-time apprentice carpenter at Custom Master, 400 Manhattan Avenue (Hank Spooner, prop.). With the money he was earning in the carpentry shop (he was only earning about \$25 per week as a messenger), he began to settle down and assume certain financial responsibilities. He bought a car and moved into a new apartment.

Suddenly, in the month of August, 1974, work fell off in the carpentry shop and Mr. Spooner could not pay Mr. Joyner a salary. Mr. Joyner's newly assumed debts had to be paid, however. At about the same time, a man whom Mr. Joyner had known through a fellow messenger at National Quotation, offered Mr. Joyner ten dollars to chauffeur him back and forth between Manhattan and the oil company storefront in Queens.



Mr. Joyner drove this man, known only as Teddy, to the oil company a few times. On one occasion, Teddy took him inside and there the undercover policemen offered him ready money for stolen goods and encouraged him to get as much as he could. There has never been any charge or evidence, nor is it the fact, that Mr. Joyner, who was desperate for the money at that time, ever engaged in any thefts of checks. However, having been an addict on the streets for many years, he did know where these could be purchased on the street. And that was his crime. This history, of course, as Mr. Joyner himself would be the first to admit, does not excuse his act, but I offer it to the Court as explanation in the hope of mitigation of the penalty to be imposed.

Although there was no actual entrapment, as the law defines it, in this case, the facts are that a weak man, ravaged by years of addiction, who was, on his own steam, working his way back, who had voluntarily admitted himself into a drug treatment program and who had found employment and who wanted desperately to hold on to his own car and his own apartment, for which he had worked honestly, was enticed into this crime by police solicitation. For the preceding two years, Mr. Joyner had not been involved in any criminal activity. These two clean years of progress followed his release from Clinton Prison in January, 1972, after serving 6 months on a burglar's tools misdemeanor. His three other convictions were all drug related misdemeanor burglaries, or criminal trespasses. This is a man who, despite the well-recognized degenerate effect of heroin, had never committed a violent crime in service of his habit and who, finally, at the age of 32, after 13 years of addiction, during which he was unaided by education or family help or counseling, was taking responsibility for himself and working towards a better life.

And he is continuing that attitude now during his incarceration at Riker's Island. Having achieved his high school equivalency diploma during his previous stay at Clinton, he has now enrolled himself for college credit at the Riker's branch of the John Jay College. He takes three courses at this time, Sociology and English and Urban Studies. Having had the previous carpentry experience at Custom Master, Mr. Joyner has taken the eligibility examination for further training in the Riker's Manpower Development and Training Program. Attached to this letter is a copy of a letter received from Mrs. Francis Rodriguez, Department of Correction Rehabilitation Counselor, who attests to Mr. Joyner's excellent prospects for rehabilitation.

Your Honor, Monty Joyner is now 34 years old. He never knew his father who was killed in an auto accident before his birth. His mother single handedly brought him and his brother to New York in 1947 from North Carolina and from then on she worked around the clock. Her struggle is a credit to her; she lives now in Westbury, Long Island. But there was little time to attend to Monty who was left on the streets where he became an addict and dropped out of high school. Whatever crimes he has committed in the service of his addiction have been petty, property, non-violent and drug related. But it is all behind him now. He has kicked the habit and he has kicked the adolescent immaturity that knew no father figure or self-responsibility. He has exhibited, both outside of prison in the last couple of years and presently at Rikers, a determination to rehabilitate himself. The authorities at his former drug program and at Rikers, as the attached letters attest, believe that his prospects are excellent. He has shown the maturity to accept his guilt and to face up to it, and he is already serving a one year prison sentence for the non-violent crime which is essentially the same as that which is the subject of the information before this Court and grows out of the same set of transactions. When he finishes that sentence, should this Court see fit to impose a concurrent and equal federal term, or a period of federal probation to follow the State sentence, Mr. Joyner will have immediate access to the Drug Treatment Program. His counselor, Mr. Arthur Hawkins has told me that as far as they are concerned, Mr. Joyner is still actively enrolled. He will have access to his old job at Custom House. Monty Joyner is not a threat to society and his further incarceration beyond his State sentence should not be necessary for that reason, and, given the nature of this crime, I respectfully suggest that a year's incarceration with the attendant disabilities of felony conviction is punishment enough. Indeed, your Honor, society would best be served by enabling Mr. Joyner to continue along his own path toward the rehabilitation which he had begun outside of prison before unfortunate circumstances, not entirely of his own making, led to this incident.

Thus, it is respectfully suggested that the interests of society and the rehabilitation of Monty Joyner would be best served by a federal sentence equivalent and concurrent to the State sentence he is presently serving\*, or alternatively,

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\* In order to ensure actual concurrence, it may be necessary to sentence to a term of months that accounts for the time already served in State custody. Since Mr. Joyner has been free on federal bond, he may not automatically receive credit for State time served.



Hon. Henry Bramwell  
March , 1975  
Page 5

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by a period of federal probation to follow the completion of the State sentence. In any case, I wish to thank the Court in advance for the utmost consideration I know it will give to this letter and to the sentence it will eventually impose, and I also request some opportunity prior to imposition of sentence to review, with the defendant, the pre-sentence report prepared by the probation department.

Respectfully,

LAWRENCE STERN

LS/cs  
cc: Miles Cunningham  
Assistant United States Attorney  
Eastern District of New York  
Federal Courthouse  
225 Cadman Plaza East  
Brooklyn, N.Y. 11201

RODRIQUEZ LETTER





THE CITY OF NEW YORK  
DEPARTMENT OF CORRECTION

N.Y.C. CORRECTIONAL INSTITUTION FOR MEN  
ADULT DIVISION — REFORMATORY DIVISION  
10-10 Hazen Street  
East Elmhurst, N.Y. 11370

726-4616

BENJAMIN J. MALCOLM  
Commissioner

February 25, 1975

Lawrence Stern, Esq.  
11 Monroe Place  
Brooklyn, NY

Dear Mr. Stern:

This is to confirm our telephone conversation of February 20, 1975.

I will begin by giving you some idea of our program and how it operates. The Rehabilitation Coordinating Unit is dedicated to provide services not presently provided by the institution. These include intensive counselling, referrals to the Manpower Training Program, referrals to Parole, and referrals to Residential Facilities.

Monty Joyner has been assigned to my caseload since January, 1975. Since then I have worked closely with him. We have had many discussions about his life outside of the institution as well as in. I have had a chance to observe his institutional adjustment, and he appears to be doing well. He is enrolled in the John Jay College of Criminal Justice. He is a first-semester student of English, Sociology and Urban Studies.

He appears to be a bright young man, speaks very well and seems anxious to want to rehabilitate himself. He has faced his errors and appears to want to move in the right direction. His main concern at this time is the Federal case pending against him.

If you desire further information, please feel free to call on me.

Sincerely yours,

*Frances Rodriguez*  
Frances Rodriguez,  
Rehabilitation Counselor

PURCELL LETTER



Methadone Maintenance  
Treatment Program  
Harlem Unit  
103 East 125th Street, Rm. 204  
New York, New York 10035  
Phone: 427-8077

November 29, 1974

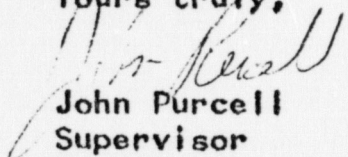
Mr. Paul Lazarus  
Assistant U.S. Attorney  
Eastern District Office of New York  
Federal Court House  
225 Cadman Plaza  
Brooklyn, New York 11201

Dear Mr. Lazarus:

Mr. Monty Joyner has been a patient in our Methadone clinic since April 14, 1972. He has posed very few problems and always got along well with our staff. Mr. Joyner responded well to counselling in that he found employment and worked steadily. Monty Joyner case is very important to us because he is one of our better patients.

For further information please feel free to call at the above number.

Yours truly,

  
John Purcell  
Supervisor

JP/nmd

APPELLANT'S RAP SHEET



UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION  
IDENTIFICATION DIVISION  
WASHINGTON, D.C. 20537

10-23-74

The following FBI record, NUMBER 721 794 E, is furnished FOR OFFICIAL USE ONLY.  
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WHERE DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS  
DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD NY NY	Monty B Joyner 431237	7-2-71	1)PL 220.15-1 cr Poss dang drug 2)PL 220.35 cr sell dang drug	
PD NY NY	Monty B Joyner 431237	8-12-71	PL 140.20 D Fel Burg 3 PL 140.35 A Misc Poss Burg Tools 0	
NYC Reception & Classification Center East Elmhurst NY	Monty Joyner 771-5642	8-23-71	burg tools	6 mos
PD NY NY	Monty B Joyner 431237 283	1-19-72	PL 220.05 poss Dang Drugs	
FD NY NY	Monty B Joyner 431237 SID0730362Q	8-14-73	PL 120.10 (1) aslt C fel PL 265.05 (2) poss gun D Fel	
USM Bklyn NY	Monty Joyner 2322 USM 5389	9-30-74	Possession of Stolen Government Property	
Fed Det Hdqtrs New York NY	Monty Joyner 81950 158	9-30-74	T of Gov't Prop	

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
IDENTIFICATION DIVISION  
WASHINGTON, D.C. 20537

10-23-74 323

*Hofman*

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DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD NY NY	Monty B. Joyner B431237	2-21-59	3305 PHL poss heroin	
PD NY NY	Monty Joyner 431237	12-26-63	1747D PL hypo needle	
Crim Crts City of NY NY NY	Monty Joyner QB 1970/65	4-12-65	attempt FL	
PD NY NY	Monty Bernard Joyner 431237	8-6-68	FL 140.20 D fel burg 3rd PL 140.35 A misd poss burg tools 0	
NYC Receipt Class Center East Elmhurst NY	Bernard Joyner 768-3941	9-5-68	burg tools-	4 mos
PD NY NY	Monty Joyner 431237	12-22-68	FL 140.20 D fel burg 3rd	
NYC Receipt Class Center East Elmhurst NY	Monty Joyner 869-1864	5-2-69	FL	90 das
PD NY NY	Monty Joyner 431237	7-10-70	FL 140.25 burg PL 165.40 crim poss stol prop	
NY City Receipt and Class Ctr East Elmhurst NY	Monty Joyner 770-5450	7-13-70	Crim Tresp U. S. SECRET SERVICE	10 mos

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NEW YORK, N. Y.



UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
IDENTIFICATION DIVISION  
WASHINGTON, D.C. 20537

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DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
USSS NY NY	Monty Joyner J-1-8 98 652	9-29-74	641 Title 18 UCE Poss Stln Gov Property	

SENTENCE MINUTES  
(INCLUDING PROPER CORRECTIONS)



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,                   :  
                  -against-                       :  
MONTY BERNARD JOYNER,                       :  
                                  Defendant.                       :  
-----x

75-CR-125

United States Courthouse  
Brooklyn, New York  
  
April 7, 1975  
10:15 o'clock a.m.

B e f o r e :

HONORABLE HENRY BRAMWELL,    U.S.D.J.

SHELDON SILVERMAN  
ACTING OFFICIAL COURT REPORTER

## Appearances:

DAVID G. TRAGER, ESQ.,  
United States Attorney  
for the Eastern District of New York

BY: MYLES CUNNINGHAM, ESQ.  
Assistant United States Attorney

LAWRENCE STERN, ESQ.,  
Attorney for the defendant

\* \* \* \*



1 THE CLERK: For sentence: U.S.A. v.  
2 Joyner.

3 THE COURT: Monty Bernard Joyner.

4 THE DEFENDANT: Yes.

5 THE COURT: Any legal reason why sentence  
6 should not be imposed at this time?

7 MR. STERN: No, there's not, your Honor.

8 THE COURT: Mr. Joyner, is there any reason  
9 why sentence should not be imposed at this time.

10 MR. STERN: No, your Honor.

11 THE COURT: You may speak, counselor, on  
12 behalf of Mr. Joyner.

13 MR. STERN: As your Honor know, on February  
14 19th of this hear, Mr. Joyner waived indictment and  
15 trial and pleaded guilty before your Honor to a one-  
16 count information charging him with possession under  
17 Section 1708 of one stolen United States Treasury  
18 check in the amount of approximately \$200.

19 These charges grew out of a mass arrest in  
20 September of 1974, which was well publicized in  
21 which some <sup>eighty</sup> other people were arrested in a warehouse  
22 in Queens and the charges against all of those  
23 people who were invited by undercover policemen  
24 to a sham party there with allegations of various  
25 kinds and quantities over a few months period.

1 Mr. Joyner was arrested there and charged  
2 with both State and Federal charges growing out of  
3 sales of checks to these undercover policemen.

4 THE COURT: That was not a massive arrest.  
5 That was an arrest separate from that, a separate  
6 thing.

7 You go right ahead.

8 MR. STERN: The arrests were because of the  
9 prior --

10 THE COURT: The arrests were independent of  
11 what the charges are here.

12 MR. STERN: They were for the charges, yes.

13 THE COURT: That's true.

14 MR. STERN: In September of 1974, Mr. Joyner  
15 pleaded guilty in the Supreme Court of Kings County  
16 to a one-count indictment charging him with posses-  
17 sion of stolen property and he was sentenced to one  
18 year in prisonment on that charge and he is pre-  
19 sently serving that sentence at Rikers Island.

20 Mr. Joyner became an addict, your Honor, in  
21 1969 at the age of 19. He was an addict for about  
22 14 years. During that time he committed petty  
23 burglaries in the service of his habit and he has  
24 about four convictions, the maximum period of time  
25 served on any one was six months for petty burglary



1 or trespassing.

2 At no time during those years, your Honor,  
3 did he ever commit a violent crime in the service  
4 of his habit, which, as you well know, sometimes  
5 leads men to do that, but Mr. Joyner never did.

6 Yes, he did commit crimes, misdemeanors, all  
7 of them in the service of that habit; but then at the  
8 age of about 30, your Honor, while he was serving  
9 his last sentence at Clinton Prison in 1970,  
10 Mr. Joyner experienced a kind of turnaround. I  
11 think it was probably due to maturity he achieved  
12 at the age of 30.

13 At that time he decided to go after his high  
14 school equivalency diploma which he did do at Clinton  
15 Prison and he achieved that there.

16 When he was released from Clinton Prison,  
17 he immediately voluntarily enrolled himself in the  
18 Harlem Unit of Beth Israel Hospital Methadone  
19 Maintenance Program.

20 Your Honor has a letter from the supervisor  
21 of that program attesting to Mr. Joyner's attend-  
22 ance there and his progress there.

23 He was released from Clinton Prison in  
24 1972, your Honor, and immediately entered that  
25 program and became, for the first time in his life,

1 after fourteen years of addiction, during which  
2 time he was uncounselled by anybody, uneducated and  
3 had, by the way, your Honor, no family at all --  
4 he was born in North Carolina. He was brought to  
5 New York by a step-mother and he lived with her  
6 during his youth.

7 His father was killed, apparently, in an  
8 automobile accident before his birth and he had no  
9 father at the time.

10 He grew up, basically, on the streets, no  
11 discredit to his step-mother, who was working around  
12 the clock to support him and his family. There was  
13 no authority figure in his home, your Honor.

14 Finally, after these years of addiction  
15 and petty crime, in 1970 he started to do something  
16 for himself, your Honor. He got his high school  
17 equivalency diploma. In 1972, after his release  
18 from Clinton, he immediately enrolled in the  
19 Methadone Maintenance Program and became heroin-  
20 free.

21 Not only that, but he started to be employed,  
22 gainfully. He's becoming and was becoming at that  
23 time a skilled carpenter, your Honor. He was  
24 working for Custom Master and I refer to that in my  
25 sentence letter and he was working there and learning



1 the trade of carpentry.

2 He was also working on the side, parttime,  
3 as a messenger for the National Quotation Company.

4 Between his release in 1972 and the events  
5 that brought us to court today, your Honor, there  
6 were no criminal convictions or criminal activity  
7 on the part of Mr. Joyner. He was working to  
8 straighten himself out, your Honor, during those  
9 two years. He was employed. He was heroin-free  
10 and he had gotten himself an apartment and a car.  
11 He was settling down, your Honor.

12 Then, in August of 1974, work fell off in the  
13 carpentry shop and his employer, Mr. Spooner,  
14 couldn't pay him the salary any more, but Mr. Joyner's  
15 debts remained. He still had the car and he still  
16 had the apartment. He thought he could make a few  
17 dollars by chauffeuring a friend who asked him to  
18 take him out to Queens a couple of times and he made  
19 about \$10.00 driving this man back and forth to  
20 Queens.

21 At one point the man invited him into the  
22 storefront in Queens which turned out to be the  
23 Superior Oil Company storefront behind which the  
24 undercover policemen were operating. Apparently,  
25 at that time, what they were doing was sending

1 agents and informants out on the street, your  
2 Honor, putting the word out that they were ready to  
3 receive stolen goods of all kinds and they did the  
4 same thing with Mr. Joyner when he went inside with  
5 his friend, they offered him money, ready money,  
6 for any stolen checks he could bring them.

7 Mr. Joyner was desperate at that time to keep  
8 what he had earned for himself so far and pursuant  
9 to their repeated enticements -- not that we are  
10 alleging there was entrapment in this case, your  
11 Honor, but it is very easy for the police to entice  
12 men who have been addicts, who are struggling to  
13 make some kind of gainful life for themselves and  
14 suddenly lose the foundations which they have  
15 built and then an undercover policeman offers them  
16 a quick and easy buck.

17 Mr. Joyner took it. There's no doubt about  
18 it. He admits that he was wrong, pleaded guilty  
19 in the State courts, your Honor. He's pleading  
20 guilty here. He waived indictment. He's not saying  
21 that what he did was right. He is not trying to  
22 justify it. He is only trying to offer to your  
23 Honor the facts in the case in possible mitigation  
24 of the penalty that your Honor would impose.

25 When he was arrested on these charges in



1 September, your Honor, of 1974, he was incarcerated  
2 at Rikers Island. There, at Rikers Island, he has  
3 continued along the road that he was working towards  
4 after he was released from Clinton Prison in 1972.

5 He has enrolled himself in the John Jay  
6 College and he is taking three courses, your Honor,  
7 Sociology, English and Urban Studies.

8 At the time that I wrote your Honor a  
9 sentencing letter, he had applied to the Manpower  
10 Development & Training Program but had not been  
11 accepted.

12 He now tells me he's been accepted to that  
13 program in carpentry so that he can continue to  
14 learn the skill that he was developing in the two  
15 years prior to these incidents and a letter from  
16 Francis Rodriguez, his rehabilitation counselor  
17 at Rikers, included, attached to the ~~center~~ <sup>Sentence</sup>  
18 letter and attests to the progress he's making  
19 there.

20 He's presently serving, your Honor, a one-  
21 year sentence for basically the same transctions  
22 that he's appearing here before your Honor. He  
23 has been working towards a better life for himself.  
24 He had started that prior to these incidents. Further  
25 incarceration beyond the one-year sentence that he's

1 already serving is not going to enable him to  
2 continue that on his own, your Honor, rather he is  
3 a non-violent person.

4 There is no histroy that he's a danger to  
5 society in any way and he is serving a one-year  
6 term for the non-violent crime that is essentially  
7 the same one growing out of the same transactions  
8 for which he appears before your Honor today.

9 I specifically suggest to your Honor that  
10 the interests of society would be best served in  
11 this case if Mr. Joyner could continue the progress  
12 towards his own rehabilitation which he had started  
13 on his own since 1972, free from the influence,  
14 not entirely of his own making, which let him slip  
15 that last time.

16 The interests of society will be served  
17 because this man at 34, is finally getting a hold  
18 of himself and can be and will be a productive  
19 citizen, your Honor.

20 The interests of society will not be served  
21 by his further incarceration beyond the one-year  
22 sentence that he's serving in the State courts.

23 I wish to make some reference to errors in  
24 the probation report which your Honor --

25 THE COURT: You can make reference to the



1 errors in the Probation report.

2 MR. STERN: The first arrest that's listed  
3 there is apparently incorrect, your Honor. At  
4 18, he was arrested for possession of marijuana.  
5 It's listed in the probation report as heroin.  
6 That's incorrect.

7 There are other errors, for example, it says  
8 in the probation report that he became addicted at  
9 21. He became addicted at 19, your Honor.

10 It is a fact that he achieved his high  
11 school equivalency diploma during his incarceration  
12 at Clinton Prison.

13 The probation report says, "Although the  
14 records are not readily available," they don't come  
15 forth with any evidence that that is not so, but  
16 simply say that the records are not readily available.  
17 They could have found them. It is a fact that he  
18 achieved it there.

19 The Probation Report makes some ~~substantive~~ <sup>subjective</sup>  
20 references, your Honor, and I would hope your Honor  
21 would take into consideration the facts of his  
22 case rather than the ~~substantive~~ <sup>subjective</sup> references to his  
23 character which are without foundation in the  
24 probation report.

25 For example, to say Mr. Joyner disclaims --

1 I'm quoting now -- "any out-of-wedlock children"  
2 is to say nothing, but to imply that there must be  
3 some simply because he disclaims it.

4 A lot was made in the report of the fact  
5 Mr. Joyner is an out-of-wedlock child, something  
6 which is certainly not his fault and then to put in  
7 the report that he himself disclaims any out-of-  
8 wedlock children is too, I think, an attempt --

9 THE COURT: I'm not even paying it any  
10 attention, any attention to that.

11 MR. STERN: Thank you.

12 It also says in the report since his State  
13 arrest he has been unemployed. Well, that is true,  
14 your Honor, but the reason for that is because he's  
15 been incarcerated at Rikers Island.

16 Again, an attempt to state a fact in such  
17 a way which is meaningless to the issues of this  
18 sentencing.

19 It also goes on to state in the Probation  
20 Report that he has, according to the Probation Officer,  
21 failed to profit from his previous incarcerations.

22 Well, it is only since 1972, it is only  
23 since then that he has finally become heroin-free  
24 and unaddicted.

25 THE COURT: Counselor, since then and on



1 8/14/73, the case was dismissed, but it's an  
2 assault and possession of loaded firearms.

3 Are you still telling me this man is non-  
4 violent since then?

5 MR. STERN: He was not guilty of that crime,  
6 your Honor.

7 THE COURT: I understand they dismissed. I  
8 understand this, but this man has a history, he  
9 has a history. Each year, almost, there is some  
10 type of situation where he is involved in crime and  
11 for you to stand up here and say this man is  
12 bringing himself back, it's not so.

13 It's not so on this type of a situation.  
14 I give you every right to talk for your client  
15 and say anything you want, but when I see a record  
16 like this and you stand up and give me laudatory  
17 phrases as to what this man's position is, it's  
18 inconsistent with what he's doing.

19 MR. STERN: Your Honor, I don't think it is  
20 inconsistent. The record shows only petty misde-  
21 meanors.

22 THE COURT: That's the difference between  
23 you and me, the complete difference.

24 MR. STERN: I'm trying to refer your Honor  
25 to the record of the facts, not trying to make





1 supervisor of the Harlem Unit attest to the fact  
2 that he was one of their most favored cases and  
3 has been.

4 Mrs. Rodriguez says that. Mr. Purcell at  
5 the Harlem Unit says that. They don't say that  
6 this man, that it's not a fact this man has been  
7 doing ~~nothing~~ <sup>something</sup> for himself. They say the opposite.

8 THE COURT: He's not stopping. You can  
9 tell me all of these facts, but he's back here  
10 because -- that's why he's here today and this was  
11 an involved situation. It just isn't the one  
12 check that the Government's information shows.

13 This is an involved situation. You know it  
14 and I know it. And that's why he's here today.

15 MR. STERN: There were ten checks involved,  
16 your Honor, over a three-day period, but the police  
17 kept saying to him, "Come on, you can get us more,  
18 bring us more."

19 It was not something that he was doing on his  
20 own. He was pulled into it, your Honor.

21 THE COURT: This is not the way that the  
22 person that can operate today and not come before  
23 a court in this fashion. This leads to him being  
24 right here.

25 MR. STERN: He admits his guilt, your Honor.

1 We're only asking that the punishment that  
2 be imposed be imposed in connection to the indivi-  
3 dual that's standing here, that it has <sup>something</sup> ~~nothing~~ to  
4 do with making him a better person and affording  
5 society the chance to have a decent rehabilitated  
6 citizen in its midst rather than just dispensing  
7 with him and not looking at the opportunities that  
8 he has tried to make for himself and they are there,  
9 your Honor.

10 That's about all I have to say.

11 THE COURT: Mr. Joyner, do you have anything  
12 you wish to say on your own behalf?

13 THE DEFENDANT: No, no, thank you.

14 THE COURT: Does the United States Attorney  
15 have anything to say?

16 MR. CUNNINGHAM: No, your Honor.

17 THE COURT: Monty Bernard Joyner, this is  
18 under 75-CR-125, the violation here was possession  
19 of stolen mail. It's a violation under 18 U.S.C.  
20 Section 1708, the penalty is \$2000 or five years  
21 or both.

22 This defendant pleaded guilty to a one-count  
23 information charging him with the possession of a  
24 United States Treasury check payable to another  
25 individual which was the contents of a letter stolen



1 from the United States mail.

2 The defendant knowing the same to have been  
3 stolen, and in connection with the offense herein,  
4 this defendant sold ten United States Treasury  
5 checks in addition to other stolen property--other  
6 stolen goods, I'm sorry, to a New York City under-  
7 cover police officer posing as a purchaser of stolen  
8 goods.

9 This defendant is currently serving a one-  
10 year State sentence on a related offense. The de-  
11 fendant has admitted his guilt and states that his  
12 involvement in the offense was predicated upon  
13 financial debts he had then incurred.

14 Prior criminal record of this defendant  
15 shows several convictions in the city and state  
16 courts of New York.

17 It is adjudged that the defendant is hereby  
18 committed to the custody of the Attorney General  
19 or his authorized representative for imprisonment  
20 for a term of three years. The sentence imposed  
21 herein shall run consecutive -- I'll make that  
22 concurrent to the present State sentence now being  
23 served by this defendant.

24 That's a concurrent sentence with his  
25 present State sentence.

1 MR. STERN: Would your Honor consider  
2 adding a 4208 provision to the sentence?

3 THE COURT: No, I will not.

4 Thank you.

5 MR. STERN: Thank you, your Honor.  
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EASTERN DISTRICT  
OF NEW YORK

*P. Carraway*